

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

GERALD A. FAST, et al,

Plaintiff,

v.

**APPLEBEE'S INTERNATIONAL, INC
d/b/a APPLEBEE'S NEIGHBORHOOD
GRILL & BAR**

Defendant.

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CASE NO. 06-4146-CV-C-NKL

JOINT PROPOSED SCHEDULING ORDER FOLLOWING REMAND

Come now the parties and for their Proposed Scheduling Order, state as follows:

1. In a scheduling conference on August 4, 2011, the Court directed the parties to file a joint proposed scheduling order for further processing and trial of this matter.

2. The proposed schedule takes into account the following considerations:

a. Defendant will file a petition for writ of certiorari to the Supreme Court on or before October 4, 2011, seeking review of the Eighth Circuit's decision in this matter. Defendant anticipates that the Supreme Court will rule on that petition no later than early 2012. Given the relatively short period of time involved, and to avoid any unnecessary and avoidable expense associated with further activities in this case during that period of time, Defendant respectfully requests that this Court stay further proceedings in this Court until such time as the Supreme Court has ruled on the petition for certiorari. Plaintiffs oppose the request to stay proceedings in this Court.

b. Plaintiffs have obtained discovery of payroll data through March 2008 for the individuals who have opted into this case. Plaintiffs seek supplemental payroll data through

December 31, 2011, and Defendant has agreed to provide such data in the same format as the payroll data previously produced.

c. Plaintiffs intend to seek discovery on the limited issue of any changes Defendant has made with respect to duties and/or compensation of servers and bartenders since September 2008. At this time, plaintiff intends to conduct such discovery by way of written discovery requests and, if necessary, corporate representative deposition(s).

3. If the Court declines to stay this matter until such time as the Supreme Court has ruled on the petition for certiorari, the parties propose the following schedule:

a. On or before January 31, 2012, Defendant shall produce payroll data, for all individuals who have opted into the case, for the period of April 2008 to December 31, 2011.

b. On or before February 24, 2012, Plaintiffs shall provide supplemental expert reports to reflect any damages sought based on the additional payroll data.

c. Any rebuttal experts reports related to any such supplemental expert reports shall be provided by March 30, 2012.

d. Any depositions related to any such supplemental or rebuttal expert reports shall be completed by April 9, 2012.

e. Any supplemental discovery shall be completed by April 1, 2012. The parties reserve the right, however, to object to any discovery that is not “supplemental” in nature, and is instead discovery that could have been completed prior to the close of discovery.

f. In 2009, the parties identified witnesses who were expected to be called to testify at trial. Circumstances may have changed such that some witnesses are no longer under the control of a party, and/or are no longer within the subpoena power of this Court. As such, the parties may need to substitute other witnesses or seek to call a previously disclosed trial witness

by deposition rather than in person. If a party seeks to substitute witnesses or call a witness at trial by way of deposition testimony who was not previously deposed, the party intending to present such testimony shall notify the opposing party at least ninety (90) days before trial, and any depositions for purposes of recording trial testimony shall be completed at least forty-five (45) days before trial.

g. Plaintiffs believe the case may be tried to the Court in five (5) days. Defendant believes the case should be set for a ten (10) day bench trial. Plaintiffs believe the matter is ready to be set for trial after May 7, 2012. Due to trial settings in other matters on April 23, 2012 and May 21, 2012, Defendant's counsel requests that the matter be set for trial on or after June 4, 2012.

h. The parties shall file any trial briefs no later than 10 days before the first day of trial.

Respectfully submitted,

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